



# Department of Police



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Freedom of Information Advisory Council  
Criminal Investigative Records Subcommittee  
General Assembly Building, 2<sup>nd</sup> Floor  
910 Capitol Street  
Richmond, VA 23219

Dear Sirs:

I am opposed for the below listed reasons to the proposal being considered today by the Criminal Investigative Records Subcommittee to amend the Freedom of Information Act. I assume that the proposed amendments are dependent upon the repeal of 2.2-3706, A through I, in its entirety because the conflicts between this statute and the amendments are significant. My comments are based on this assumption.

2.2-3706.1 A – The requirement that the records be released within one business day simply cannot be accomplished. The current standard of five days, which every local and state government office in Virginia is subject to, has worked well for years and there is no reason to create a new and very restrictive one day requirement just for law enforcement. The requirement for law enforcement to provide information orally that is not maintained in a public record is a major departure from established past practice. The entire Freedom of Information Act is based on access to documents. This single sentence could possibly give rise to demands for police officials to orally describe conversations they had with other law enforcement officials and prosecutors about criminal incidents, arrests and charges.

2.2-3706.1 A1 – This expands the requirement to release information from just felonies to misdemeanors. It also adds the time of the offense, the exact location, and the name, age, and gender of the victim and a list of actual property damaged or stolen. This information is not always precise upon initial investigation and release of it can hamper the investigation, especially if the suspect can craft an alibi around what the victim initially said. Identifying the victim is particularly troublesome. The proposed amendment provides a specific exception for victims of sexual assault, which begs the

question of why the victims of other crimes are not afforded similar compassion. The names and ages of a juvenile who receives an obscene text message, an elderly woman who lives alone and is the victim of a attempted scam, or a man who had part of his expensive firearm collection stolen would all have to be revealed.

2.2-3706.1 A2 – This apparently requires that tapes of 911 calls be released. The information in these calls is often critical to the prosecution of a criminal case. The caller often tells who did what, when, where and why. It is often no different than the face to face conversation that an officer has with a victim at the scene and even that conversation is at least initially protected in these amendments. Disclosure of 911 tapes can be detrimental to the successful prosecution of a criminal case.

2.2-37-6.1 A3 – This expands the release of identifying information on juveniles 14 years of age or older charged with felonies, which is a major change and one that should not be undertaken lightly. It is ironic that this amendment also continues to permit the withholding of the photograph of an arrested suspect to avoid jeopardizing an investigation, but the other amendments require victims to be identified and the contents of 911 calls to be disclosed when the release of this information can often jeopardize an investigation.

2.2-3706.1 A4 – This amendment is so broadly written that it appears it can be used by anyone to obtain the criminal record of someone else from a police agency. Law enforcement is currently restricted from providing this information. The public records of the courts are the best repository of such documents. The last sentence of this amendment appears to require a police agency to disclose the entire criminal investigation report if it contains a single reference to charges made against a suspect. This is in conflict with proposed section 2.2-3706.1 B.

2.2-3706.1 B – This amendment protects the records of an active criminal investigation. While that is commendable, the wording in this section seems to allow the disclosure of public records that are a part of a criminal investigation. The following scenario can certainly be expected under these amendments. Example: A victim calls 911 to report a major fraud involving mortgage loans. The information in that call would have to be revealed under these amendments. The exact list of what was stolen and the name, age and gender of all the victims would also have to be revealed. If a police officer accesses public court records as part of the ongoing criminal fraud investigation, it would be possible for the suspect to follow the course of the investigation by requesting those public records from the criminal investigative file.

This amendment is also troubling because it opens for full inspection any criminal investigation file that is completed. These files contain all sorts of information, some of it accurate and some of it inaccurate. Witnesses speculate on suspects, talk about their neighbors and blame family members. Officers include names and addresses of informants, sources of leads, and give opinions on veracity. The danger and embarrassment to citizens from such disclosure of information is real.

The amendment also permits a criminal investigative file to be made public if no one has been charged within three years. It is common to make serious felony charges years after a crime was committed. Disclosure of the case file after three years does not further the ends of justice.

2.2-3706.1 C – While this amendment allows the law enforcement agency to redact certain information from a criminal investigative file before it is released, it does not provide the protections for crime victims and witnesses that the current law allows.

2.2-3706.2 – This amendment removes several important exclusions from the provisions of the Freedom of Information Act. It removes the exclusion for reports of crime submitted in confidence to police agencies. It removes the exclusion for identifying persons who provide information about crime to local crime commissions under a promise of anonymity.

It maintains, though, the exclusion for records of persons imprisoned in penal institutions. It also maintains the exclusion for pretrial and post dispositional records of persons charged or convicted of crimes.

Interestingly, this amendment creates a brand new exclusion. It permits a police officer and his next-of-kin full access to an administrative investigation related to allegations of wrongdoing once it has been concluded.

The current FOIA law has worked well for years. It does not make good sense to remove protections for victims and witnesses while simultaneously preserving protections for persons charged or convicted of crimes. In addition, interfering with the ability of sheriffs and chiefs of police to properly manage their agencies is not progress.

Please reconsider these amendments and the negative impact they would have on criminal justice in Virginia. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Broadfoot", written in a cursive style.

Colonel Philip A. Broadfoot  
Chief of Police